

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

SEAN R. BROWN, #1083630,

Petitioner,

v.

CIVIL ACTION NO. 2:19cv370

HAROLD W. CLARKE, Director,  
Virginia Department of Corrections,

Respondent.

**FINAL ORDER**

Before the Court is a Petition for a Writ of *Habeas Corpus* filed pursuant to 28 U.S.C. § 2254, ECF No. 6, and the Respondent's Motion to Dismiss. ECF No. 12. In his Petition, the *pro se* Petitioner alleges violation of federal rights pertaining to his convictions in the Virginia Beach Circuit Court for Murder, Abduction with the Intent to Extort Money, Robbery and Conspiracy. As a result of the convictions, Petitioner was sentenced to serve a total of 80 years in prison with 30 years suspended.

The Petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation was filed April 10, 2020 and recommends dismissal of the Petition without prejudice. ECF No. 17. On April 23, 2020, Petitioner timely filed objections to the Report and Recommendation. Respondent has not responded to Petitioner's objections and the time to do so has expired.

The Court has reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation. The Court has also made *de novo* findings with respect to the

portions objected to, and does hereby **ADOPT** and **APPROVE** the findings and recommendations set forth in the Report and Recommendation filed April 10, 2020. It is, therefore, **ORDERED** that the Respondent's Motion to Dismiss, ECF No. 12, is **GRANTED**, and that the Petition, ECF No. 6, is **DENIED** and **DISMISSED WITHOUT PREJUDICE**. It is further **ORDERED** that Judgment be entered in favor of the Respondent.

Finding that the procedural basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so **within thirty (30) days** from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall forward a copy of this Order to Petitioner and to counsel of record for the Respondent. It is so **ORDERED**.

Norfolk, Virginia  
May 15, 2020

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/s/  
Arenda L. Wright Allen  
United States District Judge